

# SUMMARY ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Kelly Analyst: Marion Mann DeJong Bill Number: SB 1920

Related Bills: See Prior Analysis Telephone: 845-6979 Amended Date: 03/27/2000

Attorney: Patrick Kusiak Sponsor:

**SUBJECT:** Manufacturers' Investment Credit/Extends to Major Group of Other Electric Power Generation

- ☒ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced February 24, 2000.
- ☐ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- ☒ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 24, 2000.
- ☐ FURTHER AMENDMENTS NECESSARY.
- ☐ DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.
- ☒ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 24, 2000, STILL APPLIES.
- ☐ OTHER - See comments below.

### SUMMARY OF BILL

Under the Bank and Corporation Tax Law (B&CTL), this bill would modify the Manufacturers' Investment Credit (MIC) to include taxpayers engaged in businesses relating to electric power generation.

### SUMMARY OF AMENDMENT

The March 27, 2000, amendments made department-recommended technical changes to remove the phrase "the amendments made by the act adding this subdivision shall be operative" each time it appeared and instead insert the correct citation for the specific laws that changed the MIC.

Except for the Technical Considerations, the department's analysis of the bill as introduced February 24, 2000, still applies. The Policy Considerations, Implementation Considerations and Board Position from the prior analysis are reiterated below.

### POLICY CONSIDERATIONS

This bill would raise the following policy considerations.

- Ⓟ Although this bill would modify the binding contract rules in the MIC, it may not be limited to future business decisions since it does not exclude purchases of qualified property made by a binding contract that existed after January 1, 1998, but prior to the date of enactment of this bill.

### Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

### Legislative Director

### Date

Johnnie Lou Rosas

4/6/00

- ⌚ This bill would not expand the MIC for Personal Income Tax law (PITL) taxpayers engaged in business relating to other electric power generation, creating inconsistent application of the MIC between PITL and B&CTL taxpayers. In addition, in the case of any MIC that is passed through from an S corporation to the shareholders, the shareholders would not be eligible to claim the credit.

#### IMPLEMENTATION CONSIDERATIONS

This bill would raise the following implementation considerations. Department staff is available to assist the author with any necessary amendments.

- ⌚ This bill does not modify the definition of qualified property to include property used in businesses relating to other electric power generation. Thus, taxpayers added by this bill would qualify for the MIC only if their property qualified under current law. This would limit the availability of the MIC and may lead to disputes between taxpayers and the department.
- ⌚ This bill does not make a corresponding change to the MIC under the PITL, which may cause taxpayer confusion. Taxpayers who are shareholders of an S corporation may be especially confused since the credit could not flow from the S corporation to the shareholder. This could lead to disputes between taxpayers and the department.
- ⌚ This bill would expand the definition of manufacturing to include the production of electricity from specified energy sources. As a result, taxpayers who qualify for the MIC under existing law could claim the MIC for auxiliary activities that satisfy this expanded definition of manufacturing; for example, a manufacturing plant that includes on its premises a co-generation facility that produces electricity to run the manufacturing line. Under current law, while this co-generation facility may properly be treated as an auxiliary establishment under the SIC Manual and be assigned the same SIC Code as the manufacturing activity it supports, the costs of the property in the co-generation facility would still not qualify for the MIC under the current definition of manufacturing since the property would not be treated as being used in a qualified activity. However, such activities would qualify under the manufacturing definition provided by this bill. If the author did not intend to expand the credit available to taxpayers currently qualified for the MIC, the bill should be amended so the expanded definition of manufacturing applies only to activities classified under NAICS Code 221119.

#### BOARD POSITION

Pending.